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IN THE

Supreme Court of the United States

No. 930 — October Term, 1961
No. 100 — October Term, 1962

MILTON J. HARRIS,

Appellant

vs.

THE FLORIDA REAL ESTATE COMMISSION,
A statutory Commission under the Real Estate Laws of the State of Florida,

Appellees.

APPEAL FROM THE SUPREME COURT OF FLORIDA

APPELLANT'S PETITION FOR REHEARING.

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The appellant, MILTON J. HARRIS, pursuant to Rule 58 (1) as well as Rule 58 (2) of the Revised Rules of the Supreme Court of the United States, respectfully moves the Court for a rehearing of the Per Curiam decision granting appellees' motion to dismiss the appeal in the above entitled and numbered cause, and treating the papers whereon the appeal was taken as a Petition for Writ of Certiorari, denying certiorari on October 8, 1962. The cause was docketed as #930, October term 1961, and the

Court's decision is numbered 100, so both numbers are set out.)

For his Petition for rehearing appellant states:

1. The writer of this brief, for many, many years has contended that a bare per curiam decision of denial without even a short opinion setting out the reasons and decisions predicating the entering of such order, places *an appealing litigant at a great disadvantage;* that although the rules provide for a petition for rehearing, yet the absence from the decision of the reasons for the court's holding, or upon what rule of law or decision it is based, puts great stumbling blocks in a litigant's path, and adds nothing to the doctrine of stare decisis, nor does it inform an advocate or the bar what has been omitted, if anything.

It is respectfully suggested to this Honorable Court that it is time to re-examine the doctrine of "per curiam decisions", the inadequacy of which many lawyers feel, and although this may be a lone out-cry in the dark, it is hoped that this feeble voice may one day fall upon sympathetic judicial ears, who will hark back to their days of advocacy and the trials connected therewith.

2. The matter involved in this appeal here is not one of a cause celebre; it has no social significance of great importance, nor will the issues here predicate any drastic executive action, but the denial of this petition for rehearing which would be an adherence to the reversal (not on constitutional grounds) by the Florida Supreme Court of the Final Decree by the Circuit Court of Dade County, Florida, which Circuit Court held unconstitutional Section 475.25 (2) of the Florida Statutes providing for manda-

tory revocation by the Real Estate Commission, an administrative body, of a real estate broker's license for *mere confinement* in a *State or Federal* prison, will deprive the appellant, a 61 year old citizen, who has been a real estate broker for 38 years, of his livelihood.

It is respectfully submitted that Sec. 427.25 (2) Florida Statutes is plainly and outstandingly unconstitutional under the organic law of the United States. The statute requirement to an administrative body (the appellees) mandatorially to revoke a real estate broker's license because of being confined in a State or Federal prison will not and cannot apply equally to a person convicted for evasion of income tax, because this mandatory provision applies *only to the sentence* and *judgment given under said conviction*, depending upon whether the sentence and judgment of conviction carries with it a prison term because if it does not the broker's license could not be revoked under the said statute.

In the cause at bar appellees seeking to revoke the appellant's real estate license, was not invoked because he was convicted for income tax evasion, but because he *was confined* in a Federal institution. (appellant was convicted for income tax evasion and sentenced to a 6-month prison term. He was released after 113 days because of the inconsequential nature of the offense.)

To illustrate the unconstitutional features of the section 475.25 (2) Florida Statute:

If after being found guilty of the evasion of income tax, the court had

(a) fined him only, and the fine was paid, the mandatory provisions of revocation statute would not come into play—because Harris was not "confined";

(b) If Harris, the appellant, was fined and took a pauper's oath, he would then only have to serve thirty days—his broker's license, under the mandatory provisions of the statute, would have to be revoked by the Real Estate Commission—because he was "confined".

(c) If the court put him on probation at the time of his sentence, and he avoided confinement after conviction—his broker's license could not be revoked under the mandatory provisions of the attacked statute.

(d) If the court sentenced him to an imprisonment term and suspended the incarceration during good behavior—his broker's license under the mandatory provision for revocation could not be revoked.

If the five steel corporation executives fined a total of $44,000.00 on their nolo contendere pleas to charges of conspiracy to fix prices and rig bids in steel sales in New York by the Honorable United States District Judge, Sylvester J. Ryan, on October 25, 1962, were duly licensed Florida real estate brokers, the mandatory provisions of the Florida Statute for the Real Estate Commission to revoke their licenses would not apply because they had not been confined.

As a further illustration, if General Walker and Governor Barnett were duly licensed real estate brokers in Florida, the Real Estate Commission would mandatorially require the revocation of General Walker's brokerage license because he was confined in a Federal prison, whereas, the mandatory provisions would not apply for Gov. Barnett up to the present time because he has not been confined.

It is respectfully contended therefore, that the Court inadvertently failed to consider that any person who is a real estate broker in Florida, convicted of evasion of income tax would not come under the mandatory provisions of the revocation statute as aforesaid unless one was confined in a state or federal prison. A person fined and who paid the fine, or for one who was found guilty and put on probation, the brokers license would not be revoked under the mandatory provision aforesaid.

3. In this appeal, there was directly involved the question of whether the omission to name any Appellate Court in the Notice of Appeal violated the due process clause. If an appeal is allowed from one Court to another, and it is not necessary to name the Appellate Court in the notice and such an appeal *is due process*, then it is suggested to this Court that once and for all a clarification of this rule of law should be made by an opinion so that it can become a stare decisis enunciation.

Rehearing is respectfully requested and a reversal of this Honorable Court's decision.

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CERTIFICATE OF GOOD FAITH

I, M. H. ROSENHOUSE, of counsel for the Appellant herein, and a member of the bar of this Court, do hereby certify that the above and foregoing petition for rehearing is presented in good faith and not for delay, and I do hereby certify that the said petition is restricted to what I believe to be intervening circumstances of substantial or controlling effect.

PROOF OF SERVICE

I, M. H. ROSENHOUSE, counsel for appellant herein, and a member of the bar of the United States Supreme Court, do hereby certify that on the _____ day of October, 1962, I served four (4) copies of the foregoing appellant's petition for rehearing by mailing said copies in a duly addressed envelope with sufficient air mail postage prepaid to:

Benjamin T. Shuman, Esq.,
General Counsel, Florida Real Estate Commission
State Office Building,
West Morse Boulevard
Winter Park, Florida

and depositing the same in the United States postoffice or mail box in Miami, Florida.